

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES P. BAILEY and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, MEMPHIS
INTERNATIONAL AIRPORT, Memphis, TN

*Docket No. 01-1993; Submitted on the Record;
Issued April 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant developed a gastrointestinal disorder while in the performance of his duties.

In the first appeal of this case,¹ the Board, on May 29, 1997, set aside the denial of appellant's claim for an emotional condition and remanded the case for further development of the evidence. The Board found that appellant had implicated a number of compensable factors of employment that were not disputed by the employing establishment, including the responsibility and pressure of his job as an air traffic controller, training with live traffic, returning to a busy position after only a 15-minute lunch break, working rotating shifts and observing near misses while working a coordinator position. The collision of two high-performance jets was not a compensable factor, as the jets were outside the tower's airspace and not communicating with the tower when the collision occurred. Two other incidents, which the employing establishment could not verify, required additional investigation of the facts.

The Board directed the Office of Workers' Compensation Programs to prepare a statement of accepted facts after completing this investigation and to refer appellant to a medical specialist for a reasoned opinion on whether the established compensable factors of employment caused or contributed to appellant's diagnosed gastrointestinal disorder.

On August 5, 1997 the Office requested additional information from appellant. Although the Office sent this request to appellant's last known address, the letter was returned as undeliverable. The Office repeated its request on September 4, 1997 but the letter was again returned as undeliverable.² Telephone calls to various parties in an attempt to locate appellant proved fruitless.

¹ Docket No. 95-1935 (issued May 29, 1997).

² The second request was dated September 4, 1997 but postmarked September 10, 1997.

In a decision dated October 21, 1997, the Office denied appellant's claim for compensation.

On June 28, 1998 the Office obtained appellant's current address, telephone and facsimile number. The Office contacted appellant the following day and faxed him a reissued copy of the October 21, 1997 decision.

Appellant requested an oral argument before the Board. The Director of the Office filed a motion to set aside its October 21, 1997 decision and to remand the case for further development. The Office argued that, once appellant informed the Office of his current mailing address, it should have vacated the denial of appellant's claim and undertaken the further development ordered by the Board. The Board granted the Director's motion on July 28, 2000.³

On August 28, 2000 the Office requested that appellant verify his current address in writing within 10 days. The Office explained that it could not officially change his address of record without a dated and signed verification. Although the Office sent this request to the new address it obtained on June 28, 1998 and to appellant's address of record, the letter was returned as undeliverable.

Unable to locate appellant and unable to comply with the Board's July 28, 2000 order, the Office issued a decision on September 26, 2000 denying appellant's claim for compensation.

The Board finds that appellant has not met his burden of proof to establish that he developed a gastrointestinal disorder while in the performance of his duties.

A claimant seeking compensation under the Federal Employees' Compensation Act⁴ (Act) has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁵ including that he is an "employee" within the meaning of the Act⁶ and that he filed a claim within the applicable time limitation.⁷ The claimant must also establish that he sustained an injury in the performance of duty and that his disability, if any, was causally related to the employment injury.⁸

Proceedings under the Act are not adversarial, nor is the Office a disinterested arbiter. Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence: It has the obligation to see that justice is done.⁹ Once the claimant has made a *prima facie* case, the Office has the responsibility to take

³ Docket No. 98-2635 (issued July 28, 2000) (Order Granting Remand and Canceling Oral Argument).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ *Kenneth W. Grant*, 39 ECAB 208 (1987); *James E. Lynch*, 32 ECAB 216 (1980); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357 (1951); see 5 U.S.C. § 8101(1).

⁷ *Paul S. Devlin*, 39 ECAB 715 (1988); *Emmet L. Pickens*, 33 ECAB 1807 (1982); *Kathryn A. O'Donnell*, 7 ECAB 227 (1954); see 5 U.S.C. § 8122.

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989); see *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁹ *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

the next step, either of notifying the claimant what additional evidence is needed to fully establish the claim, or of developing evidence in order to reach a decision.¹⁰

The Office has discharged its responsibility in this case. On remand from the Board's May 29, 1997 decision, the Office made numerous attempts to contact appellant by mail and by telephone. Properly addressed letters were returned as undeliverable. As a consequence the Office was unable to help appellant develop the evidence needed to fully establish his claim for compensation. The Office eventually reached appellant and obtained a current mailing address, but renewed attempts to obtain the necessary evidence were unsuccessful.

Appellant bears the burden of proof to establish that he developed a gastrointestinal disorder while in the performance of his duties. Although he implicated a number of compensable factors of employment, further development of the factual and medical evidence was required to fully establish his claim, as the Board explained in its May 29, 1997 decision. As appellant had not provided the district Office with a dated and signed verification of his proper mailing address, the Office cannot help him discharge his burden of proof by further developing the evidence needed to establish that he sustained an injury while in the performance of his duties.¹¹

The September 26, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.2.g (April 1993).

¹¹ The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its September 26, 2000 decision. 20 C.F.R. § 501.2(c). The Board, therefore, cannot consider evidence submitted on appeal that appellant previously notified the Office in writing of his proper mailing address.